

UNITED STATES BANKRUPTCY COURT  
DEPARTMENT 5  
**JUDGE CHRISTOPHER B. LATHAM, PRESIDING**  
**WEDNESDAY, SEPTEMBER 2, 2015**

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**10:00 AM**

**1 - 08-07234-CL      Ch 13    SANDRA MORENO SOLANO**

MOTION TO MODIFY THE AMENDED ORDER ON: (1) DEBTOR'S EX PARTE MOTION TO EMPLOY SPECIAL COUNSEL; (2) PATRICK HERMAN, ESQ.'S FINAL FEE APPLICATION; AND (3) DEBTOR'S MOTION TO, INTER ALIA, DISGORGE MR. HERMAN'S FEE (RE ECF NO. 213) FILED BY TRUSTEE

ATTORNEY: PATRICK E. HERMAN (SANDRA MORENO SOLANO)  
ATTORNEY: JON COOPER (SANDRA MORENO SOLANO)  
ATTORNEY: MARK C. MAZZARELLA (SANDRA MORENO SOLANO)

**2 - 12-00676-CL      Ch 13    JUNAR I & KIETCHIE PANLAQUI**

MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY TRUSTEE

**Tentative Ruling:** The court has reviewed the Trustee's motion to modify plan, Debtors' statement of non-opposition, and the Trustee's statement of case status. Having received no opposition, and good cause appearing, the court **grants** the motion and **approves** the modified plan. It excuses appearances at the September 2, 2015 hearing, and the Trustee may submit an order consistent with this tentative ruling.

ATTORNEY: D.J. RAUSA (JUNAR I PANLAQUI, KIETCHIE PANLAQUI)

**3 - 12-06512-CL      Ch 13    STEPHEN M. & ALICE J. SOLOFF**

MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY TRUSTEE

ATTORNEY: DIANE H. GIBSON (ALICE J. SOLOFF, STEPHEN M. SOLOFF)

**4 - 13-02264-CL      Ch 13    JERRY VENIDA BARIZO**

MOTION FOR AUTHORITY TO INCUR NEW DEBT FOR PURCHASE OF VEHICLE FILED BY DEBTOR (ON SHORTENED TIME)

**Tentative Ruling:** The court has considered Debtor's motion for authority to incur debt. The Trustee withdrew his opposition on August 24, 2015 (ECF No. 60). Having received no other opposition, and good cause appearing, the court **grants** the motion and excuses appearances at the September 2, 2015 hearing. It awards Debtor's counsel \$490 in guideline fees to be paid as an administrative expense through Debtor's plan. Debtor may submit an order consistent with this tentative ruling.

ATTORNEY: THOMAS F. MILES (JERRY VENIDA BARIZO)

**10:00 AM**

**5 - 14-02846-CL      Ch 13   RICARDO VARGAS QUIJANO & DELIA CHAVEZ**

MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY TRUSTEE

**Tentative Ruling:** The court has reviewed the Trustee's motion to modify plan. Having received no opposition, and good cause appearing, the court **grants** the motion and **approves** the modified plan. It excuses appearances at the September 2, 2015 hearing, and the Trustee may submit an order consistent with this tentative ruling.

ATTORNEY: DAVID L. SPECKMAN (DELIA CHAVEZ, RICARDO VARGAS QUIJANO)

**6 - 14-04334-CL      Ch 13   DAVID KENT & MICHELE ANN WALTER**

MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY DEBTORS

**Tentative Ruling:** The court has reviewed Debtors' motion to modify plan, the Trustee's objections to confirmation and motion to dismiss case, Debtors' declaration of unresolved objections, the Trustee's statement of case status, and the motion to modify plan filed August 27, 2015 (ECF No. 66) (the "Second Modified Plan"). The court acknowledges that Debtors filed the Second Modified Plan in response to the Trustee's concerns. But the opposition to this newly modified plan is not due until September 28, 2015. Accordingly, the court **continues** this matter to **September 30, 2015 at 10:00 a.m.** to allow notice to run. It excuses appearances at the September 2, 2015 hearing.

ATTORNEY: LARISSA L. LAZARUS (DAVID KENT WALTER, MICHELE ANN WALTER)

**7 - 15-00374-CL      Ch 13   PAUL H. & KIMBERLY C GERRITSEN**

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 8/5/15)

ATTORNEY: GREGORY HIGHNOTE (KIMBERLY C GERRITSEN, PAUL H. GERRITSEN)

8 - 15-01060-CL Ch 13 CHARLIE L. SMITH

OPPOSITION TO TRUSTEE'S AMENDED CLASSIFICATION OF CLAIM #1  
FILED BY WELLS FARGO BANK NA DBA WELLS FARGO DEALER SERVICES

**Tentative Ruling:** The court has considered the Trustee's amended notice of classification of Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services's ("WFDS") Claim No. 1, WFDS's opposition, and the Trustee's statements of case status.

Debtor filed a voluntary Chapter 13 petition on February 24 (ECF No. 1). Debtor's initial Chapter 13 plan excluded WFDS's claim for a 2011 Dodge Challenger and proposed to pay it outside the plan (ECF No. 10). Pre-confirmation, Debtor amended the plan and placed the 2011 Challenger in paragraph 5, with an allowed secured value of \$13,909 (ECF No. 27). There is no proof of service. On May 21, 2015, he again modified his plan pre-confirmation, but did not alter the treatment of Claim No. 1, and this time provided notice (ECF No. 51).

On June 26, the Trustee submitted his amended notice classifying WFDS's claim for the Dodge Challenger (ECF No. 55). The Trustee proposed to treat the claim in the same manner as the plan, with a secured value of \$13,909. WFDS opposed (ECF No. 63). It contends that Debtor acquired the vehicle within 910 days of the petition, thus § 506(a) requires Debtor to pay the retail price of the vehicle, \$19,025. In his case status statements, which the court treats as a reply, the Trustee asserts that: he is paying WFDS according to the plan; WFDS did not object to confirmation; and the objection deadline has passed (ECF Nos. 70 and 71).

The court confirmed the plan on August 28 (ECF No. 72). The Trustee's classification accords with the plan. And a confirmed plan's provisions "bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1307(a).

The Trustee, for his part, will pay claims per the confirmed plan - to him, it makes no difference if he pays WFDS \$13,909 or \$19,025. Thus, WFDS's dispute is ultimately with Debtor. And it should have objected to the plan. It did not. Accordingly, the plan is binding and the court **overrules** the opposition.

That said, the court is not convinced that WFDS, received proper notice of the amended plan and treatment of its claim. Debtor served "Wells Fargo" at "PO Box 19640, Irvine, CA 92623." Debtor did not serve *Wells Fargo Dealer Services*. And WFDS's proof of claim requests notice be sent to "P.O. Box 19657, Irvine, CA 92623-9657" (Claim 1-1). *See also* Fed. R. Bankr. P. 7004(h) and 7004(b)(3). Accordingly, the court invites WFDS to file a motion to reconsider the confirmation order.

For the foregoing reasons, the court **overrules** the opposition. If WFDS is prepared to submit on this tentative ruling, it may notify the Trustee and the courtroom deputy. The court will then excuse appearances at the September 2, 2015 hearing and the Trustee may submit an order consistent with this tentative ruling.

ATTORNEY: JOHN H. KIM (WELLS FARGO BANK NA)  
OTHER: CHARLIE L. SMITH

**10:00 AM**

**9 - 15-01916-CL Ch 13 RICHELLE E. BENSON**

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

**Tentative Ruling:** The court has considered the Trustee's objection to confirmation, Debtor's opposition, and the parties' statements of case status. Debtor is requesting valuation information from a privately-held business that she holds a fractionalized interest in. Debtor's counsel has not yet received that information, and will then need to submit it to the Trustee to review. Good cause appearing, the court **continues** this matter to **October 14, 2015 at 10:00 a.m.** and excuses appearances at the September 2, 2015 hearing.

ATTORNEY: AHREN TILLER (RICHELLE E. BENSON)

**10 - 15-02420-CL Ch 13 ALINE G. & JOHN D. HENDRICKS**

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND REQUEST FOR DISMISSAL FILED BY AMERICAN CREDIT ACCEPTANCE LLC

ATTORNEY: MICHAEL D. HUDGINS (ALINE G. HENDRICKS, JOHN D. HENDRICKS)

ATTORNEY: JOHN H. KIM (MERICAN CREDIT ACCEPTANCE LLC)

**11 - 15-02568-CL Ch 13 DARLA S BAILEY**

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 8/5/15)

ATTORNEY: GREGORY HIGHNOTE (DARLA S BAILEY)

**12 - 15-03804-CL Ch 13 MARIO & LIVIER SALAZAR**

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY JPMORGAN CHASE BANK NA

**Tentative Ruling:** The court has considered JP Morgan Chase Bank, N.A.'s ("Chase") objection to confirmation, Debtors' opposition, and the parties' statements of case status. The parties ask the court to continue the matter so Chase can file a proof of claim and Debtors can amend their plan. Good cause appearing, the court **continues** this matter to **November 25, 2015 at 10:00 a.m.** and excuses appearances at the September 2, 2015 hearing.

ATTORNEY: EUGENIO RAMOS (LIVIER SALAZAR, MARIO SALAZAR)

ATTORNEY: ROBERT ZAHRADKA (JPMORGAN CHASE BANK NA)

**02:00 PM**

**1 - 10-08467-CL Ch 13 LILLY J. SWIFT**

MOTION TO DISMISS CASE FILED BY TRUSTEE

**Tentative Ruling:** The court has considered the Trustee's motion to dismiss, Debtor's opposition, and the parties' statements of case status. The parties agree that Debtor may pay the case off by November 18, 2015. Good cause appearing, the court **continues** this matter to **December 9, 2015 at 2:00 p.m.** awards Debtor's counsel \$450 in guideline fees, and excuses appearances at the September 2, 2015 hearing.

ATTORNEY: CHARLES E. FOUGERON (LILLY J. SWIFT)

**02:00 PM**

**2 - 10-09809-CL Ch 13 GEORGINA ROMERO**

**MOTION TO DISMISS CASE FILED BY TRUSTEE**

**Tentative Ruling:** The court has considered the Trustee's motion to dismiss, Debtor's opposition, and the Trustee's statement of case status. Debtor requests a short continuance, and the Trustee proposes that Debtor pay the case off by February 4, 2016. Good cause appearing, the court **continues** this matter to **March 2, 2016 at 2:00 p.m.** If Debtor is prepared to submit on this tentative ruling, she may contact the Trustee and the courtroom deputy, and the court will excuse appearances at the September 2, 2015 hearing.

ATTORNEY: GREGORY HIGHNOTE (GEORGINA ROMERO)

**3 - 10-09985-CL Ch 13 RAFAEL MARROQUIN & VIVIAN E PEREZ**

**MOTION TO DISMISS CASE FILED BY TRUSTEE**

**Tentative Ruling:** The court has considered the Trustee's motion to dismiss, Debtors' opposition, and the Trustee's statement of case status. Debtors request that they "be allowed to continue to make payments until you determine that our chapter 13 bankruptcy has been met." And the Trustee proposes that they pay the case off by October 8, 2015. Good cause appearing, the court **continues** this matter to **October 28, 2015 at 2:00 p.m.** If Debtors are prepared to submit on this tentative ruling, they may contact the Trustee and the courtroom deputy, and the court will excuse appearances at the September 2, 2015 hearing.

ATTORNEY: PEDRO S. BONILLA (RAFAEL MARROQUIN, VIVIAN E PEREZ)

**4 - 10-10693-CL Ch 13 HENRY E. STRINGFELLOW**

**MOTION TO DISMISS CASE FILED BY TRUSTEE**

**Tentative Ruling:** The court has considered the Trustee's motion to dismiss, Debtor's opposition, and the parties' statements of case status. The Trustee proposes that Debtor pay the case off by February 18, 2016; Debtor "confirm[s]" that the final payment will be made before" that date. Good cause appearing, the court **continues** this matter to **March 16, 2016 at 2:00 p.m.** and excuses appearances at the September 2, 2015 hearing.

ATTORNEY: ANDREW H. GRIFFIN (HENRY E. STRINGFELLOW)

**5 - 10-10795-CL Ch 13 GREGORY R. SMITH**

**MOTION TO DISMISS CASE FILED BY TRUSTEE**

**Tentative Ruling:** The court has considered the Trustee's motion to dismiss, Debtor's opposition, and the parties' statements of case status. The parties agree that Debtor may pay the case off by November 21, 2015. Good cause appearing, the court **continues** this matter to **December 23, 2015 at 2:00 p.m.**, awards Debtor's counsel \$490 in guideline fees, and excuses appearances at the September 2, 2015 hearing.

ATTORNEY: THOMAS K. SHANNER (GREGORY R. SMITH)

**02:00 PM**

**6 - 10-14837-CL      Ch 13   JOHN DICKERSON**

AMENDED MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN  
FILED BY DEBTOR (fr. 8/5/15)

**Tentative Ruling:** The court has considered Debtor's motion to modify, the Trustee's statement of opposition, Debtor's amended motion to modify, and the parties' statements of case status. The Trustee no longer opposes the motion. Having received no opposition, and good cause appearing, the court **grants** the motion, **approves** the modified plan, and excuses appearances at the September 2, 2015 hearing. Debtor may submit an order consistent with this tentative ruling.

ATTORNEY: D.J. RAUSA (JOHN DICKERSON)

**7 - 12-11693-CL      Ch 13   SAMUEL S. SOLORZANO**

MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 8/5/15)

ATTORNEY: JAMES BYRNES (SAMUEL S. SOLORZANO)

## 8 - 12-14967-CL Ch 13 IBOLYA BENCZE BALAZS

## MOTION FOR RELIEF FROM STAY, RS #AP-1 FILED BY WELLS FARGO BANK NA

**Tentative Ruling:** The court has considered Wells Fargo Bank, N.A.'s ("Movant") motion for stay relief and debtor Ibolya Balzs's ("Debtor") opposition. For the following reasons, the court **grants** the motion.

### Legal Standard

Cause exists to lift the stay under 11 U.S.C. § 362(d)(1) when the debtor's postpetition "failure to make monthly payments corresponds with the absence of an equity cushion." *See In re Avila*, 311 B.R. 81, 83-84 (Bankr. N.D. Cal. 2004); *see also In re Delaney-Morin*, 304 B.R. 365, 370 n.3 (B.A.P. 9th Cir. 2003). The debtor bears the burden of proof in opposing a stay relief request under § 362(d)(1). 11 U.S.C. § 362(g); *see also La Jolla Mortg. Fund v. Rancho El Cajon Associates*, 18 B.R. 283, 288 (Bankr. S.D. Cal. 1982).

The Ninth Circuit has held that a 20% equity cushion may constitute adequate protection. *See Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1401 (9th Cir. 1984). And courts have found that smaller equity cushions may provide adequate protection, depending on the particular circumstances. *Id.* (compiling cases). Generally, "an equity cushion under 11% is insufficient to constitute adequate protection." *Kost v. First Interstate Bank of Greybull (In re Kost)*, 102 B.R. 829, 832 (D. Wyo. 1989) (quoting *In re McKillips*, 81 B.R. 454, 458 (Bankr. N.D. Ill. 1987)).

Under 11 U.S.C. § 362(d)(2), cause exists to lift the stay if "the debtor does not have an equity in such property" and "such property is not necessary to an effective reorganization . . . ."

### Discussion

Debtor filed a voluntary Chapter 13 petition on November 7, 2012 (ECF No. 1). She owns a rental property (the "Property"). Movant holds the first deed of trust in the Property.

The parties agree the property's fair market value is \$604,112. They also agree that the balance owed Movant is \$582,758.55. And they agree that Debtor has missed 27 months of postpetition payments. The court concludes that a \$21,353.45 equity cushion - 3.5% of the Property's fair market value - does not adequately protect Movant. Consequently, it finds that Debtor's failure to make postpetition payments constitutes cause and **grants** the motion under (d)(1).

In addition, the court finds cause under (d)(2). Another lender, presumably another division of Wells Fargo (Movant lists it as "Wfhm"), holds an \$81,480 junior secured claim. Thus, the total for all the voluntary encumbrances, \$664,238.55, exceeds the Property's fair market value by \$60,126.55. Debtor thus lacks equity in the property. And she never asserts that it is necessary for reorganization. Accordingly, the court **grants** the motion under (d)(2).

### Conclusion

For the foregoing reason, the court **grants** Movant's stay relief motion. It finds that: (1) a 3.5% equity cushion is insufficient to protect Movant's interest in the Property; and (2) Debtor lacks equity in the Property and it is not necessary to an effective reorganization. If Debtor is prepared to submit on this tentative ruling, she may notify opposing counsel and the courtroom deputy. The court will then excuse appearances at the September 2, 2015 hearing, and Movant may submit an order consistent with this tentative ruling.

ATTORNEY: ALBERTO M. CARRANZA (IBOLYA BENCZE BALAZS)  
ATTORNEY: ROBERT ZAHRADKA (WELLS FARGO BANK NA)

**02:00 PM**

**9 - 13-08789-CL      Ch 13   JAMAL REMON PALMER**

MOTION FOR RELIEF FROM STAY, RS #MDE-1 FILED BY TOYOTA MOTOR  
CREDIT CORPORATION

ATTORNEY: JOHN C. COLWELL (JAMAL REMON PALMER)  
ATTORNEY: MARK D. ESTLE (TOYOTA MOTOR CREDIT CORPORATION)



## APPLICATION FOR AWARD OF COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR DOAN LAW FIRM LLP, ATTORNEY FOR DEBTOR (restored fr. 6/24/15)

**Tentative Ruling:** The court has considered the Doan Law Firm LLP's ("Applicant") application for compensation, the Chapter 13 Trustee's opposition and status report, Applicant's reply, the court's earlier tentative ruling, counsel's oral argument at the June 24 hearing, the court's supplemental order, debtor Fanny Hartlett's ("Debtor") declaration in support, and attorney Christopher Bush's declaration. For the following reasons, the court **grants** the application in part, but reduces the amount of requested fees.

### Background

On July 15, 2014, Debtor submitted her voluntary Chapter 13 petition (ECF No. 1). On July 29, she signed and filed the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorney (Business Case)" (the "RARA") (ECF No. 12, pp. 36-39). Applicant charged the initial, presumptive fee of \$4,350 (*id.*, p. 39).

Debtor's first plan drew objections, and she modified it several times. Eventually, after multiple confirmation hearings, the court confirmed Debtor's Chapter 13 plan on April 15, 2015 (ECF No. 86). The confirmation order states that "[a]ttorneys' fees and costs are not approved for payment by this Order" (*id.*).

On May 13, Applicant submitted the present fee application, seeking fees greater than the guideline amount (ECF No. 90). The Chapter 13 Trustee opposed (ECF Nos. 92 and 93), and Applicant replied (ECF No. 94). On June 23, Applicant submitted Debtor's declaration in support of the fee application (ECF No. 96). That same day, the court issued a tentative ruling (ECF No. 97). In it, the court concluded that this case was not an "atypical" Chapter 13 case. The court heard the matter on June 24, received oral argument, and took the matter under submission (ECF No. 98). On July 1, the court directed Applicant to supplement its fee application and comply with LBR 2016 by July 17 (ECF No. 99). Applicant served his supplemental materials on July 17, but did not file them until July 21 (ECF Nos. 101 and 102).

### Legal Standard

Under 11 U.S.C. § 330, the court "may allow reasonable compensation to the [Chapter 13] debtor's attorney . . . ." 11 U.S.C. § 330(a)(4)(B). *See* 11 U.S.C. § 330(a)(3) (describing "reasonable compensation"). The "customary method for assessing an attorney's fee application in bankruptcy is the 'lodestar,' under which 'the number of hours reasonably expended' is multiplied by 'a reasonable hourly rate' for the person providing the services." *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo) (Eliapo III)*, 468 F.3d 592, 598 (9th Cir. 2006) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). But the "lodestar method is not mandatory." *Id.* And "nothing in § 330 [] prevents a bankruptcy court from issuing and then relying on guidelines establishing presumptive fees for routine services in Chapter 13 cases." *Id.* at 599.

This court has established presumptive Chapter 13 fees. General Order No. 173-A. And under LBR 1002-1, an attorney for a Chapter 13 debtor must "file an executed Rights and Responsibility Statement in the form required by then-applicable General Order." LBR 1002-1(c)(2). The RARA in this matter - a Chapter 13 business case - provides for an initial fee of \$4,350, which covers 19 categories of work. The RARA also contemplates that "[a]dditional services may be required, but are not included in the 'initial fees' . . . ." These "additional services" cover seven categories of work - and the seventh is broad enough to encompass all possible services.

If counsel provides additional services and seeks additional fees, counsel should tell the debtor, provide Federal Rule of Bankruptcy Procedure 2002 notice, and file a declaration with the court "stating that counsel has so advised the debtor . . .

and the debtor has no objection to the requested fees.”

The RARA then sets presumptive (or "guideline") fees for filing motions and oppositions. It permits counsel to "seek fees above the additional fees provided a fee application is noticed, filed and approved by the court." But these presumptive fees do not exhaust the "additional services" categories - even including the amorphous "Novel and Complex" and "Routine Pleadings" categories. The presumptive fees essentially apply to services where counsel's work product appears before the court. And it would be a fiction to assume that all legal services result in court filings - indeed, the seventh category of "additional services" is expressly not limited to pleadings and court appearances.

In *Eliapo III*, the Ninth Circuit "upheld this Court's reliance upon the Guideline fees for routine services in chapter 13 cases as consistent with § 330." *In re Livolsi*, No. 10-07683-PB13, 2012 WL 1744736, at \*2 (Bankr. S.D. Cal. May 14, 2012); *In re Sokol*, No. 09-07880-PB13, 2012 WL 1340106, at \*1 (Bankr. S.D. Cal. Mar. 23, 2012). "Accordingly, in order to obtain approval of Chapter 13 attorneys fees in excess of those contemplated by the Guidelines, an attorney in this district must demonstrate that the problems faced by him/her . . . were 'more difficult than those faced by Chapter 13 practitioners on a regular basis.'" *In re Livolsi*, 2012 WL 1744736, at \*2 (quoting *Eliapo III*, 468 F.3d at 601). "If the problems that arose . . . are 'typical' of those encountered in a Chapter 13 case, the attorney may be authorized no more than the presumptive fee." *Id.*

As *Eliapo III* recognizes, using presumptive or guideline fees has "a number of virtues." *Eliapo III*, 468 F.3d at 599. It saves time - and thus fees - on fee applications. It "encourages efficient use of attorney time by providing fair compensation to efficient practitioners and by preventing inefficient practitioners from passing on the cost of their inefficiency." *Id.* And it provides for earlier payment of fees and saves the bankruptcy court from dealing with detailed fee applications. *Id.*

In this district, then, Chapter 13 debtors' counsel may request fees for "additional services" in two ways. They may seek guideline fees under the RARA. LBR 2016-2(e). Alternatively, they may request fees - either in excess of the guidelines, for novel and complex motions or oppositions, or for unenumerated motions or services - by a detailed fee application. LBR 2016-2(e); 2016-2(b).

For services covered by the "initial fee," however, the RARA does not provide an explicit mechanism for counsel to request fees above the set amount - even if the work was atypical. The court recognizes this anomaly, and realizes it may be an undesirable outcome for debtors' counsel. And in *Eliapo III*, the Ninth Circuit explained:

We emphasize that the no-look guidelines establish only presumptive fees. If a Chapter 13 practitioner does not wish to apply for fees under the no-look guidelines, he or she is free not to do so and to submit instead a detailed fee application using the lodestar method. Or, if the practitioner has already submitted a no-look application and received presumptive fees, he or she is free to seek additional fees using the lodestar method if the presumptive fees have not provided fair compensation for the time spent on the case. Of course, a practitioner who chooses the latter approach must accept the possibility that the bankruptcy court may take a fresh look at his entire fee application, not just that portion of the application relating to "additional" fees.

468 F.3d at 600. At face value, this language suggests debtors' counsel may abandon the RARA's "initial fee" at will and bring a detailed fee application. Read in context, however, it is apparent the Ninth Circuit was referring to the Northern District of California's local procedures. *Id.* at 594 ("The Bankruptcy Court for the Northern District of California has established three means by which a debtor's attorney may obtain a fee award in a Chapter 13 case."). And significantly, in that district guideline fees are not obligatory in all cases as they are in this court. In any event, because the court determines that this case was

typical, it declines to consider whether counsel may submit a detailed fee application requesting fees greater than the "initial fee."

### Discussion

Applicant argues that the court must use the lodestar method - essentially suggesting that the court should ignore the presumptive fees. The court disagrees: the lodestar method is not mandatory. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo) (Eliapo II)*, 298 B.R. 392, 398-400 (B.A.P. 9th Cir. 2003) (citing cases), *aff'd in part, rev'd in part on other grounds, and remanded*, 468 F.3d 592 (9th Cir. 2006). The guideline fees establish what qualifies, presumptively, as "reasonable compensation" under § 330. *Id.* at 400. To deviate from the presumptive fees, the court must find that this Chapter 13 case is atypical.

And Applicant contends that this case is atypical, justifying deviation from the presumptive Chapter 13 fee. It submits detailed time logs for attorney Christopher Bush and Allison Peters, a legal assistant. Mr. Bush presents billing records for 32.2 hours of work: 7.2 hours in case administration; 1.3 hours in claims administration; 2 hours to prepare the fee application; 3.1 hours for the § 341(a) meeting of creditors; 14.5 hours for the plan and confirmation; and 4.1 hours addressing stay relief motions. Ms. Peters submits 2.1 hours of work, all in case administration. In total, Applicant requests \$12,089 in fees. Debtor, for her part, has "no objection to the fees [Applicant] is requesting." The Chapter 13 Trustee agrees that this case is atypical and warrants a fee application, but claims that the proper fee amount should be either \$8,000 or \$8,400. The court first considers whether this case was atypical. Applicant points to a number of factors.

Applicant states that it was difficult to reach and communicate with Debtor, due to her long work hours and unreliable email and phone services. But counsel have a duty to communicate with their clients. Further, the RARA's initial fee encompasses "a continuing obligation to assist the debtor by returning telephone calls, answering questions and reviewing and sending correspondence." Accordingly, the court concludes that this is not out of the ordinary and does not suggest a finding that the case is "atypical."

Applicant also alleges that Debtor had an unusual set of assets and liabilities, leading to additional due diligence: Debtor has a 10% ownership interest in her family's business, and the business's financials fluctuated pre-petition. Applicant also discusses the number of real estate parcels and allegedly non-normal assets and arrears. The Trustee, for his part, points out: counsel did not need to hire an appraiser to value the business; there were no real estate or business site inspections; and claims were not scheduled in excess of the Chapter 13 debt limits. Applicant may have had to conduct due diligence, but the court concludes that it was not beyond the ordinary or what the RARA envisions. And in any event, Applicant received the higher initial fee of \$4,350 for a business case (rather than the usual \$3,600 for a consumer case).

Last, Applicant raises the difficulty of confirming a plan in this case, and asserts that a change in case strategy was necessary once the initial approach of funding the plan through real estate sales fell through. And the Trustee and numerous creditors objected to the plan, requiring a number of confirmation hearings and continued § 341(a) meetings. But marching a plan to confirmation is part of the bargain struck between a Chapter 13 debtor and her counsel - and the RARA, correctly, does not provide additional compensation for responding to objections to confirmation. Otherwise, counsel could have incentives to craft a plan that would draw objections. Further, Applicant negotiated a resolution to the various creditors' objections, thereby avoiding the time and effort of an evidentiary hearing on the plan's feasibility. Accordingly, the court finds that Applicant's efforts here were not beyond an ordinary Chapter 13 case.

Last, at oral argument, Applicant claimed that the sheer number of hours alone is sufficient to show the case's atypicality. Although the court does not doubt Applicant's skill or experience in bankruptcy, it disagrees with his assertion. As

discussed above, presumptive fees reward efficiency and discourage inefficiency. For instance, the court found that Debtor's first amended plan failed to resolve creditors' objections, thereby occasioning a second amended plan (ECF No. 47). *See In re Sokol*, 2012 WL 1340106, at \*2 ("While the Court understands that a significant amount of work may be involved in compiling and ultimately obtaining approval of a motion to modify a confirmed chapter 13 plan, to date, [debtor's counsel] has failed to demonstrate that the issues he confronted in preparing his clients' Plan Modification Motion were atypical or more difficult than those faced on a regular basis, and thus justify approval of fees in excess of those contemplated by the Guidelines."). This factor therefore does not render the case atypical.

Because this case does not warrant fees beyond the presumptive initial amount, the court finds that the initial fee of \$4,350 is reasonable. From that, it deducts its earlier \$150 sanction for Applicant's failure to comply with this court's deadlines (ECF No. 46). Applicant also requested and received \$625 in guideline fees for a stay relief motion. Accordingly, the court **awards** Applicant \$4,825 in guideline fees.

Nevertheless, the court now reviews Applicant's billing records to determine if any of the work fell outside the scope of the RARA's initial fee. Applicant submitted billing records for work in seven categories: case administration; claims administration; fee application; meetings of creditors; plan/confirmation; relief from stay (JCW-1); and relief from stay (PD-1).

The court finds that general case administration work falls within the RARA's initial fees, including categories 1 through 10, 12, and 19. That said, the RARA provides that "obtaining orders re: sale or refinance of real property" is an "additional service" not included within the initial fee. And in reviewing Mr. Bush's "case administration" entries, the court finds that many of these entries refer to a possible sale or refinance of real property - but many are billed alongside routine, case administration work. More specifically:

- A 07/14/2014 entry for 0.4 hours: "Emails with client re: questions about asset issues, possibility of sale or short sale, deficiencies, loan mods." Half of this entry refers to a sale or refinance. Accordingly, the court finds that 0.2 hours was improperly categorized.
- A 08/26/2014 entry for 0.1 hours: "Email to client re: taxes, info from realtor." The court infers that the realtor was involved with the sale or refinance of property, and thus finds that half of the entry - 0.05 hours - should have been categorized as a sale or refinance.
- A 09/05/2014 entry for 0.2 hours: "Email with Elizabeth Chavez, Client's real estate attorney." This entire entry refers to a sale or refinance.
- A 09/07/2014 entry for 0.5 hours: "Phone w/ client re: Status with realtor; US Bank objection, PNC loan mod." Two-thirds of this entry - approximately 0.33 hours - relates to a sale or refinance.
- A 09/10/2014 entry for 0.1 hours: "Email with client re:] Chavez." As an earlier entry elucidates, Ms. Chavez is Debtor's real estate attorney. Thus, this entry is for work not covered by the initial fees.
- A 10/07/2014 entry for 0.1 hours: "Email re Loan mod status." Again, this entire entry should have been categorized as a sale or refinance.
- A 11/12/2014 entry for 0.3 hours: "Email from client, review of listing contract." Half of this entry - 0.15 hours - refers to sale or refinance work.
- A 03/24/2015 entry for 0.2 hours: "Emails with trustee, client regarding short sale." This entire entry relates to a sale or refinance.

Thus, Applicant labeled 1.33 hours of work as "case administration" when it should have been categorized as an asset sale. Multiplying these hours by counsel's hourly rate yields a fee request of \$532. The RARA provides for a presumptive fee of \$545 for *obtaining* a sale or refinance - and the court finds no such order. Nevertheless, the court finds that Applicant's efforts here are reasonable and compensable under § 330(a)(4). Accordingly, it **awards** Applicant \$532 in fees for this work.

The RARA states that "[o]bjecting to improper or invalid claims" is not included

within the "initial fee." And Mr. Bush devoted 1.3 hours to reviewing about eight claims and various amended claims. Applicant requests \$520 in fees for this. But Applicant never objected to a claim. And some of this work, no doubt, relates to Applicant's efforts to confirm the plan, as creditors objected on the grounds that the plan did not fully address their arrears - thus requiring Applicant to review the claims and amend the plan to account for them. Nevertheless, the court concludes that some - approximately half - of this time is reasonable and compensable under § 330(4). It thus **awards** counsel \$260 in fees.

The RARA's initial fees do not include preparation of a fee application. Mr. Bush spent 2 hours preparing this fee application. And the court finds this reasonable. Further, the court, in reviewing Ms. Peters' billing entries, finds that the first and second entries ("Final review of Declaration" and "Tallying hours for work on case") for a combined 0.4 hours were improperly categorized as "case administration" when they should have been included in a "Fee Application" category. Accordingly, it **awards** Applicant \$856 in fees for this work.

Applicant prepared for and represented Debtor at two § 341(a) meeting of creditors. But this falls within the RARA's "initial fees" category number 15: the attorney shall "[a]pppear and represent the debtor at the § 341(a) Meeting of Creditors . . . , and any adjourned hearing thereof." (Footnote: The court notes that Applicant's § 329(a) and Federal Rule of Bankruptcy Procedure 2016(b) disclosure states that the initial fee does not include "continued 341 hearings" (ECF No. 12, pg. 34). The court has no reason to doubt Applicant's representation, but nevertheless finds that RARA category 15 supersedes this agreement. In any event, Debtor signed the RARA, but not the disclosure.) And the court finds that two § 341(a) meetings are not atypical for a Chapter 13 case.

As for the "plan/confirmation" category, the court has already found that the RARA's initial fees include confirming Debtor's plan. Above, it awarded Debtor presumptive fees for this work. The court has also already awarded counsel presumptive fees for the work in the "relief from stay (JCW-1)" category.

Last, Applicant requests \$80 in fees for 0.2 hours of work in the "relief from stay (PD-1)" category. And the RARA lists stay relief motions as outside the initial fees and sets presumptive fees at \$490 or \$625 for opposing stay relief motions. Applicant did not oppose the relevant stay relief motion. Nevertheless, the court finds that Applicant's work is reasonable and compensable under § 330(a). Accordingly, the court **awards** Applicant \$80 in fees.

**Conclusion**

The court finds that this case is not atypical. Thus, it declines to deviate from the presumptive initial fee of \$4,350 - but, from this, subtracts \$150 in sanctions. It also awards \$625 in guideline fees for opposing a stay relief motion. Applicant also performed services outside the scope of the initial fees, and the court awards Applicant \$1,728 for this work. The court calculates the fee award as follows:

\$ 4,350	guideline "initial" fees	
\$ 625	guideline stay relief fees	
\$ 532	asset disposition	
\$ 260	claims administration	
\$ 856	fee application	
<u>\$ 80</u>	<u>stay relief</u>	—
\$ 6,703	fee award	
<i>less</i>		
<u>\$150</u>	<u>sanction</u>	—
\$ 6,553	final award	

Accordingly, the court **awards** Applicant **\$6,553** in fees.

If Applicant is prepared to submit on this tentative ruling, it may notify the courtroom deputy. The court will then excuse appearances at the September 2,

2015 hearing and prepare an order.

ATTORNEY: CHRISTOPHER R. BUSH (FANNY HARTLETT)

**02:00 PM**

**11 - 14-06631-CL      Ch 13   MICHAEL SCOTT & LEORA COLLEEN SLOCUM**

MOTION TO DISMISS CASE FILED BY TRUSTEE

**Tentative Ruling:** The court has considered the Trustee's motion to dismiss, Debtors' opposition, and the parties' statements of case status. The Trustee requests an order tracking Debtors' September 19, October 19, and November 19, 2015 plan payments. Debtors consent to this. The parties could have simply stipulated to this. But they did not, thereby necessitating this tentative ruling. In addition, the court notes that this agreement provides no mechanism for Debtors to cure their arrears. Nevertheless, good cause appearing, the court **grants** the Trustee's tracking order request. It awards Debtors' counsel guideline fees of \$490 and excuses appearances at the September 2, 2015 hearing. The Trustee may submit an order consistent with his statement of case status and this tentative ruling.

ATTORNEY: TODD A. WARSHOF (LEORA COLLEEN SLOCUM, MICHAEL SCOTT SLOCUM)

ATTORNEY: WILFRED E. BRIESEMEISTER (LEORA COLLEEN SLOCUM, MICHAEL SCOTT SLOCUM)

**12 - 15-01965-CL      Ch 13   RENE R. ACEVEDO**

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY TRINITY FINANCIAL SERVICES LLC

**Court Deputy Note:** Order on Stipulation to Continue Hearing entered 9/1/15 (re ECF No. 34) -- Matter **continued to 9/30/15 at 2:00 PM**, Dept 5.

ATTORNEY: GREGORY HIGHNOTE (RENE R. ACEVEDO)

ATTORNEY: HENRY PALOCI (TRINITY FINANCIAL SERVICES LLC)

**13 - 15-04863-CL      Ch 13   FRANCIS GHOSAL**

TELE

MOTION FOR RELIEF FROM STAY, RS #MJS-2 FILED BY DEUTSCHE BANK NATIONAL TRUST COMPANY, AS INDENTURE TRUSTEE, FOR NEW CENTURY HOME EQUITY LOAN TRUST 2005-1 (ON SHORTENED TIME)

ATTORNEY: MARK J. SCHWARTZ (DEUTSCHE BANK NATIONAL TRUST COMPANY)

OTHER:      FRANCIS GHOSAL

**14 - 15-00245-CL      Ch 13   DAVID RIOS ANGUIANO**

- 1) MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF MISSION PARK CONDOMINIUM ASSOCIATION FILED BY DEBTOR

**Tentative Ruling:** Debtor's motion to value real property, treat claim as unsecured, and avoid junior lien of Creditor is **granted**. Per unopposed evidence, the residence is valued at \$170,000. Pursuant to 11 U.S.C. § 506(a), the court finds that the junior lienholder's lien is wholly unsecured by the residence's value. Pursuant to 11 U.S.C. § 1322(b), the claim may be treated as unsecured for purposes of this case, and the lien may be stripped off following plan confirmation, completion of the plan, and resulting discharge, if applicable.

As this motion is unopposed, appearances are excused and Debtor may upload an order that substantially conforms to Local Form CSD 1171.2. Once the court enters the order, Debtor is directed to serve it in accordance with FRBP 7004 and LBR 9013-10(c), and then promptly file a proof of service. The court awards Debtor's counsel \$625 in guideline fees, plus associated costs subject to proof.

- 2) MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF U.S. BANK NATIONAL ASSOCIATION (AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA NA, AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION), AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE GSAMP TRUST 2006-HE4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-HE4, ITS ASSIGNEES AND/OR SUCCESSORS, BY AND THROUGH ITS SERVICING AGENT SELECT PORTFOLIO SERVICING INC FILED BY DEBTOR

**Tentative Ruling:** Debtor's motion to value real property, treat claim as unsecured, and avoid junior lien of Creditor is **granted**. Per unopposed evidence, the residence is valued at \$170,000. Pursuant to 11 U.S.C. § 506(a), the court finds that the junior lienholder's lien is wholly unsecured by the residence's value. Pursuant to 11 U.S.C. § 1322(b), the claim may be treated as unsecured for purposes of this case, and the lien may be stripped off following plan confirmation, completion of the plan, and resulting discharge, if applicable.

As this motion is unopposed, appearances are excused and Debtor may upload an order that substantially conforms to Local Form CSD 1171.2. Once the court enters the order, Debtor is directed to serve it in accordance with FRBP 7004 and LBR 9013-10(c), and then promptly file a proof of service. The court awards Debtor's counsel \$625 in guideline fees, plus associated costs subject to proof.

- 3) OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

**Tentative Ruling:** The court will **hear** this matter.

ATTORNEY: CHRISTOPHER R. BUSH (DAVID RIOS ANGUIANO)

**15 - 14-04619-CL      Ch 13   FILOMENA BONDOC**

MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF OCWEN LOAN SERVICING FILED BY DEBTOR

ATTORNEY: RORY VOHWINKEL (FILOMENA BONDOC)

**02:00 PM**

**16 - 15-02209-CL      Ch 13   SCOTT A. NUNES, SR.**

- 1) MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF WELLS FARGO NA (RE 2ND PRIORITY LOAN) FILED BY DEBTOR
  
- 2) MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF WELLS FARGO NA (RE 1ST PRIORITY LOAN) FILED BY DEBTOR

ATTORNEY: ANDREW K. RAUCH (SCOTT A. NUNES, SR.)